

MINUTES  
REGULAR MEETING OF BOARD OF LAND COMMISSIONERS  
March 20, 2006, at 9:00 a.m.  
Room 303 State Capitol Building  
Helena, Montana

PRESENT: Lt. Governor John Bohlinger, Attorney General Mike McGrath, Superintendent of Public Instruction Linda McCulloch and State Auditor John Morrison

ABSENT: Secretary of State Brad Johnson

Mr. Morrison moved for approval of the minutes from the February 21, 2006, meeting of the Board of Land Commissioners. Seconded by Ms. McCulloch. Motion carried unanimously.

**BUSINESS CONSIDERED:**

306-1      APPROVAL OF OIL AND GAS LEASE SALE (Held March 7, 2006)

Mary Sexton, Director DNRC, said this is a request for approval of our quarterly oil and gas lease sale, which was held March 7, 2006, at the Department of Transportation. There were 248 tracts offered for lease and the total bids received was almost \$6.3 million, the average bid was \$61.61 per acre, the highest ever. This was only our third quarterly sale and we are already ahead of all of last year, at \$30 million. I would note also at this sale there were a lot of tracts in Daniels County and the total for that county alone was \$5.1 million. Daniels County is between one third and one half state trust lands. The highest competitive bid was \$140 per acre for a tract in Daniels County. I recommend approval of the leases sold at the March 7, 2006, sale.

Mr. Morrison said there are 11 tracts in the Rocky Mountain Front area, and under the stipulations when do the operating plans come before the Board?

Ms. Sexton said these are mostly in eastern Pondera and Teton Counties, just on the edge of the areas of concern.

Monte Mason, DNRC Minerals Management Bureau Chief, said the Rocky Mountain Front stipulation would trigger if and when a proposal for surface activity came before us. At that point we would initiate the MEPA review and the decision would come to the Board following completion of the MEPA review.

Mr. Morrison said thanks, I have a general familiarity with stipulation 12, my question is if we know when operating plans would be coming before us in these particular leases.

Mr. Mason said I'm sorry, we don't know until they propose. Many leases are issued where there is never any proposal. It is up to the lessee.

Mr. Morrison said there is nothing imminent right now?

Mr. Mason said no.

Mr. McGrath moved to approve the oil and gas lease sale from March 7, 2006. Seconded by Ms. McCulloch. Motion carried unanimously.

306-2      REQUEST FOR APPROVAL OF COMMUNITIZATION AGREEMENT(S)

- A. Burlington Resources Oil and Gas Company
- B. Lyco Energy Corporation
- C. Nance Petroleum Corporation

Ms. Sexton said I will briefly go over all three of the requests. The first is in Richland County with Burlington Resources. This is an area where the state owns 640 acres of the 1,288 mineral acres will be in the spacing unit, therefore we own 50% of the communitized area and we would then get 50% of the oil and gas production. That is part of the horizontal drilling in the Bakken formation oil well.

The second request is from Lyco Energy and is also in Richland County, an area where the state owns 640 acres. We own 50% of the communitized area and we would gain 50% of the oil and gas production.

The last one from Nance Petroleum is in Sheridan County in the Red River formation. We own 160 acres out of 320 acres, and is 50% of the area. We would gain half of the production from royalty and tract participation from this agreement.

Ms. Sexton urged approval for all three communization agreements.

Motion was made by Ms. McCulloch to approve the three communization agreement requests. Seconded by Mr. Morrison. Motion carried unanimously.

306-3      MAXVILLE TIMBER SALE

Ms. Sexton said this proposed timber sale is located out of our Anaconda Unit office north of Philipsburg. The sale totals 299 acres, the estimated volume is 12,000 tons, and the value is \$292,000. The silvicultural treatment includes a mixture of individual tree selection, commercial thinning, and small patch clear-cuts designed to emulate low intensity and mixed severity fire regimes. The access to the sale is across existing roads. There will be a small new road constructed and low impact temporary road construction and existing roads will be brought up to the current BMPs. There has been public comment and concern on the threatened and endangered species, bull trout and west slope cutthroat trout. Potential impacts to these species were analyzed. There will be approximately seven miles of existing roads that will be improved to standards that comply with current BMPs which will be positive for both species. The department recommends approval of this proposed timber sale.

Motion was made by Mr. Morrison to approve the Maxville Timber Sale. Seconded by Mr. McGrath. Motion carried unanimously.

306-4      MINER DITCH TIMBER SALE

Ms. Sexton said this is a small timber sale located out of our Dillon Unit office, near Jackson, Montana. The estimated minimum bid value of this is \$34,000, it is a total of 35 acres. There is overstocking and high infestation of dwarf mistletoe in both the Douglas fir and lodge pole in this area, therefore, there has

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been a loss of aspen due to this encroachment. The sale does not contain any old growth. The access to the sale is across existing roads. There is less than ½ mile of new road construction that would be required. All of the roads would be brought up to current BMP standards. This project is visible to the surrounding area, but visual impacts would be buffered due to the gentle topography of the area, harvest unit design, and harvest prescription. We would adhere to the county weed plan for this area. Ms. Sexton recommends the department be allowed to sell the Miner Ditch Timber Sale.

Motion was made by Ms. McCulloch to approve the Miner Ditch Timber Sale. Seconded by Mr. Morrison. Motion carried unanimously.

306-5                    VALLEY CREEK LIMITED ACCESS TIMBER SALE

Ms. Sexton said this is a limited access timber sale, located in Stillwater County southwest of Billings in Section 16 and the state has an opportunity to access this timber, an isolated state land parcel. The surrounding landowner is having a timber harvest and would allow this same logger to access the state piece until July 1<sup>st</sup>. This is a relatively small timber sale, the estimated value is \$15,000, for 1,500 tons. The proposed purchaser is Rimrock Timber, Inc., who has initiated this limited access sale through a written proposal the department received this month. This proposal was combined with the designated limited operating season of March 15 through July 1, 2006, so again, we are under a tight timeframe. There have been no significant issues identified with this sale. Access to the sale is across the existing road through private property and the potential purchaser has signed an exclusive temporary road use agreement with the surrounding ranch giving the purchaser permission to use these roads. The grazing lease for this section is held by the same ranch and they have agreed to allow access for the logging operation. Again, this is an opportunity we have. Ms. Sexton requested approval of this proposed limited access sale.

Motion was made by Mr. McGrath to approve the Valley Creek Limited Access Timber Sale. Seconded by Ms. McCulloch. Motion carried unanimously.

306-6                    WILD HORSE MOUNTAIN TIMBER SALE

Ms. Sexton said this proposed sale is located in Flathead County, about 8 miles south of Kalispell. This is a larger timber sale than the others, it has a value of \$856,000, it is 4.5 MMBF. In this treatment trees will be removed that are infected with bark beetle and dwarf mistletoe, the healthy trees and larger diameter trees will be retained as an over story favoring western larch, ponderosa pine, and Douglas fir as seed trees. This will promote the establishment of western larch in the under story. A sanitation/salvage is proposed on 237 acres and seed tree/shelterwood on 266 acres, for a total of 503 acres. About 175 acres will be planted with western larch and ponderosa pine. No old growth will be harvested. There is a small stand of old growth in this project area which will not be harvested in order to provide lynx denning habitat and structural diversity. There will be about 2.5 miles of new road construction and will be added to 10.5 miles of maintenance that will be required to upgrade existing roads to current BMPs. Part of this harvest will be skyline harvesting as well as tractor. Public input was solicited. This project area does not involve lands within any delineated big game ranges. Weed control management will be followed. Road construction will be brought up to BMPs. We do recommend the sale of this timber sale.

Motion was made by Mr. Morrison to approve the Wild Horse Mountain Timber Sale. Seconded by Ms. McCulloch. Motion carried unanimously.

306-7

APPROVAL OF RIGHTS-OF-WAY APPLICATIONS

Ms. Sexton said this month there are 28 requests for rights-of-way. She said there will be two new installations and I would like to bring one to your attention. Its from the Missoula Electrical Co-op (#13630) and is on page 14. They already installed a buried electrical line that went under the bed of Nine Mile Creek which is a navigable waterway and they overlooked the fact that they were to receive access also for that. Normally this would be \$100 for the access under Nine Mile Creek for the Co-op but because of trespass, the department has the opportunity to levy up to three times the amount of the rental fee or the access fee. So our recommendation at this point is the total amount be \$400, \$100 for the access fee and a \$300 penalty because this was in trespass. That is our recommendation. We have worked with the Missoula Electrical Co-op before and this is something they should have known but overlooked. Other than that we have one new telephone utility installation, three historic private access roads. This month there is #9385, 9387 through 9389, 9391 through 9394, 9399, 9403 through 9405, 9409, 13673 through 13682 from Nemont Telephone Cooperative, Inc., for telecommunications cables; #13630 from Missoula Electrical Cooperative, Inc., for buried electric distribution line; #13683 from Rappold Ranch for a private access road; #13684 from Honrud Entor, Inc. for a private access road; #13685 from Herbert Scheifler Trust for a private access road; and #13686 from Montana-Dakota Utilities for an overhead three-phase electric distribution line.

Ms. McCulloch said on page 27, the Herbert Scheifler Trust right-of-way application, I was curious to figure out where this is located, I thought it was near my house in Missoula but when I read the legal description it was in Fergus County. Where is this?

Ms. Sexton said I believe it is in Fergus County but the trust is located in Missoula.

Jeanne Holmgren, DNRC Real Estate Management Bureau Chief, said it would be the address of the folks who are making application but the actual easement would be in Fergus County.

Motion was made by Mr. McGrath to approve the rights-of-way package. Seconded by Ms. McCulloch. Motion carried unanimously.

INFORMATIONAL ITEMS

206-6

UPDATE ON STATUS OF LAND BANKING PROGRAM

Ms. Sexton said this item is a carry over from our last meeting. The department wanted to give the Board further information about land banking as we work through this process. Again, this came from the 2003 legislature and there have been over 118,000 acres nominated and the Board has approved a little over 26,000 acres to continue through the process. All of the parcels have been surveyed for cultural resource and appraisals have been completed on most parcels. That is something we are struggling a little bit with. When we went out for bid for the appraisals there was just one person who bid and it is taking a while to get some of the appraisals in. The final review of the appraisals is being done by our staff appraiser. In two counties which the Board has entertained in Treasure and Chouteau County they have been notified of the appraised values of their nominated parcels. Two of the nine landowners who requested nomination of their parcels have withdrawn based on the appraised value, reducing the Chouteau County acreage to 1,920 acres. As you know, we are appraising both with and without access and assuming access. For the most part we have taken the highest value. Some of the folks who nominated parcels need to get used to the fact that indeed we are trying to get the highest and best value out of our state trust lands. The first auctions are scheduled for June with closing dates in July and August. We will definitely

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be going for the auction on the Kalispell parcel, Section 36, which is going to be one of our big income revenue producers. As far as acquisition, we do have administrative rules following acquisition. We included in this informational agenda item a sheet that talks about the evaluation form for the acquisition of trust lands. This is going to be the first time we have gone through this process. We've set up a timeline and I am meeting regularly with my staff to go through where we are in the process. On the second page, beginning in April, we will be working up press releases, publishing the criteria for nomination in newspaper articles and on our web site and working with real estate agents so we have nominations that are available. We are also looking within our area offices for opportunities where there are properties that may be on the market that would fit well into our portfolio. From April until July we will be seeking nominations. In mid-May we will be reviewing the nominated tracts for possible acquisition, and we may set up an informal review team and perhaps invite the Land Board staffers to work with us reviewing possible nominations. In July we will be developing a priority list for parcels for possible acquisition and hopefully, by mid-July we will be closing on auction tracts. We want to wait until we have at least \$1 million in the fund, we don't want to have any properties out there where we have options when we don't have the money available. Then we would hope to develop preliminary nominations which we would present to the public, we would then option them. We do have this possibility within our rules to option up to five tracts. We are hoping at this time that we would probably be purchasing from three to five tracts. We would perform due diligence on these tracts and option money would be refundable if due diligence and the public process determined the tracts were unacceptable. We want to make sure all of these tracts are well aired in the public and with all the interest groups that work with us so there is broad level support that there are tracts appealing to us from a revenue standpoint, from a sportsmen standpoint, and from a community standpoint. That's very key for us. We will conduct tours of the tracts for interest groups to determine the level of public support. In September/October we hope to move ahead with at least two tracts. My goal would be maybe three to five but I may be optimistic, depending upon available funds. We have also talked about distribution, recognizing that although we have a lot of lands we are selling in eastern Montana some of the higher value lands are in western Montana, so we need to get a sprinkling of acquisitions both in eastern and western Montana. Because people are fairly interested in what happens in their own backyard, we are going to try and look for options in both parts of the state even though lands in eastern Montana are a lot cheaper than the lands in western Montana. According to this timeline, I want to move ahead on purchase and closing so by the end of the year we would have purchased some tracts. That's our goal, by the end of the year to have some of these tracts purchased. There is a summary attached to the agenda sheet of what we expect for revenue. Because this is the first time around, things often happen that were unanticipated but the total revenue at the positive end would be around \$9 million. Acquisition scenarios, if we were to acquire 15,000 acres we could pay about \$600 per acre, if we acquire 20,000 acres, and again, this is across the board, we know we are going to get some higher value acres if it is farm ground or even timber production land might be a higher end, whereas grazing land would be in the lower end. If we are blocking this property up it should be more attractive to us from a revenue standpoint and also from a sportsmen standpoint. That is an estimate of what kind of income we hope to gain throughout the year and what we would have to spend in acquisitions.

Mr. Morrison said thanks for developing the timeline. I think that will be very helpful in moving things forward. So far we have not, there has been about 118,000 acres nominated, 26,000 approved, we have not actually sold or bought anything. Is that right?

Ms. Sexton said that's right.

Mr. Morrison said but we have been trying.

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Ms. Sexton said we are finishing up with the appraisals and the cultural resource surveys. The Board has approved the minimum bid for some parcels, we expect June to be when they are first going to be auctioned off. We are uncomfortable looking into acquisitions until we have money in the bank.

Mr. Morrison said but with respect to the sale half of the deal, we have been trying to do that but we have run into some obstacles with the appraisal process and difficulty finding a price everyone agrees upon. Is that right?

Ms. Sexton said on some of the parcels they haven't completed the appraisal and some have come before the Board such as the one in Madison County and the one just outside Helena where there have been challenges to the appraisal. But the Board has gone ahead and entertained those challenges and we have set a new minimum bid and we will be moving forward with that. We just haven't gone to auction yet. We are waiting until the spring time when we have had the chance to advertise these parcels. We've been advertising these parcels including Section 36 in Kalispell and we just haven't set the auction date. But for many of the parcels we have gone through all of our process we are just waiting for an auction date.

Mr. Morrison said okay but in our explanation it says two of the nine landowners who requested nomination have withdrawn based on appraised value.

Ms. Sexton said that's correct.

Mr. Morrison said so do we have an issue here with how we do these appraisals on land that is isolated? I know. although it wasn't a land bank transaction with the Miller Land Exchange we had this issue about how you appraise the value of land that is isolated, it is worth one price if the surrounding landowner doesn't allow access, it is worth another price if he does. So therefore it is worth more to him than it is to us without him. And it seems to me as much as we are trying to sell off doughnut holes here and buy accessible land we are repeatedly going to deal with this issue of how we appraise these doughnut holes. Could you just comment on where we are on that? You talked about us wanting to get the highest market value but finding what that market value is seems to be murky.

Ms. Sexton said we did go through the negotiated rulemaking on the land banking process. Through that rulemaking it was determined that we would have appraisals done both with and without access and the preferred alternative was to take the appraisal with access, even though there might not be lawful access presently. When that surrounding landowner buys the land he will have access and if they wanted to sell that parcel, once they put a road to it, they could do that and then they would have that high value. That was discussed at great length through the negotiated rulemaking process. And as I understand it, the Board approved the terms of the negotiated rulemaking process.

Tom Schultz, Administrator, Trust Land Management Division, said the director is correct, that was probably the most contentious issue we had in the rulemaking, how would we appraise these lands. And there were folks on both sides. The lessees stood up and expressed their point of view that you don't have access to these lands how could you possibly appraise them with access. You had the sportsmen stand up and say as soon as those folks acquire those parcels they have access, they have increased the value. We were unable to resolve that issue through negotiated rulemaking in a consensus fashion. In effect we punted. The rules say that we will do it both ways, and the department will then make a recommendation to the Board and the Board would set the minimum value. Keep in mind these tracts will likely end up at the auction and will have no competitive bidding because they are isolated tracts. So whatever we do set for the price will be the price in most cases. I just want to give you a little insight, the States of Idaho and Wyoming, two of our border states, do it both ends of the spectrum. Wyoming assumes any lands they

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sell or exchange for have full access regardless of what access they actually have. Idaho is the opposite. They appraise their lands as though they have the access they had before them. So in essence we are between those two states both physically and in terms of our policy. We are actually looking at both ends of the spectrum, recognizing that you could make the case either side and both either land exchanges or land sales. This is an issue before us that likely will not go away, we don't have a good resolution for this. We take each piece as it comes. In most cases we have recommended the high end value and the Board has gone with that recommendation. But keep in mind as we do that, some lessees will drop out that have nominated tracts. We have also given folks fair warning. We have notified all of the lessees that once they start the process, they currently submit a \$100 fee to start the process, we give them a range of values early on in the process of what it could likely be. From my understanding the range of values we put out there is not inconsistent with the appraisals that are coming back. One of the issues is we only require \$100 to get into the game. Folks are not too unwilling to walk away from \$100. One of the things we'll talk about in the next agenda item is that in the future it seems to make sense to require more up-front money before we proceed down this path, because right now when people do withdraw from the process that it does leave the department holding costs that it cannot recover.

Mr. Morrison said as you pointed out, one of the difficulties is you don't have a competitive bidding process because the way this was set up doesn't really create the climate for competitive bidding. We come up with a price and they either take it or walk away. If they walk away we don't get the deal done and the trust and the agency wind up shouldering the cost of a failed deal. It seems to me when we appraise the value of the isolated land, right now its mostly grazing land, right, and the return we are getting is based upon the AUMs?

Mr. Schultz said yes, we make about \$1.25 per acre net on grazing land.

Mr. Morrison said is that value affected in any way by the issue of whether it is isolated or not? Or is it just based on production?

Mr. Schultz said it is affected by the access. Right now if a tract is inaccessible or isolated we don't get competitive bids on that. The typical grazing price, the minimum, is \$5.99 per AUM. The competitive bid price varies by county but in a lot of cases in the county where you have competitive bids, the average competitive bid could be \$10 - \$12 per AUM. With access to tracts you could theoretically double the price.

Mr. Morrison said right now on these doughnut holes mainly we are getting a price per AUM based on the fact that it is isolated and we are bidding it out under the land bank at a price that is based on the idea that it is accessible. It seems to me maybe finding a number in the middle allows us to make money and allows the person who owns the doughnut land to make money and facilitates the deal.

Mr. Schultz said yes. Just so you have an indication of what we're talking about in value differences, we had a lot of discussion about the Miller Land Exchange. In that exchange the low end value was \$1,300 per acre the high end value was \$4,300 per acre. We came up with a number around \$2,700 per acre. The values we're talking about here in eastern Montana on this grazing land the ground when it is valued as being inaccessible the range is between \$150 - \$160 per acre, with access it raises it from roughly \$150 - \$165 per acre. So we're talking a difference of \$15 - \$20 per acre when it is appraised with access. The range we see in western Montana where access could increase the value 75%, in eastern Montana it is not nearly as much. Still over a 640-acre tract \$10 is still \$6,000. But we're not talking nearly the difference in valuation we see in western Montana.

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Ms. Sexton said I would like to add that one of the most depressing court issues that has been brought to me is there was at the time the state received the lands through the Enabling Act a presumption that we had access to all these lands. As I understand it from MonTRUST and others there has been encouragement that at some point in time we determine if we have that or not. Of course it would have to go through the legal process and be pretty time consuming and maybe expensive but there is that presumption that when we were given these lands there was access to them at that time. That is another overriding factor that impacted the outcome of the negotiated rulemaking process.

Mr. Morrison said the great majority of people who want to buy these doughnut holes are people who don't have in mind developing the doughnut hole, they have in mind consolidating their own fee ownership of their production land. To them what they are interested in is getting a price that is going to allow them to make this pencil out. Access is just something they have to deal with in terms of figuring out whether the price is something they are going to get to pencil out. We ought to not be digging our heels in at a price based on access.

Mr. McGrath said under the rules are people who have nominated a parcel in one particular cycle precluded from coming back and nominating the same parcel in the next cycle?

Mr. Schultz said no they are not. What we did was have a window of opportunity for about three months to get the first 118,000 acres, then we prioritized those. Theoretically we've only moved ahead with less than 20% of the parcels nominated. So folks could come back to us when we open the window again. But keep in mind, with the timeframes we have we don't have a lot of time to do another cycle of nominations because we feel it is important to acquire something before we open another cycle or at least be well down the road to acquisition. Unless we can actually extend land banking into the future, there may not even be an opportunity to do another cycle, potentially.

Mr. McGrath said but now we have a proposed timeline that we would have a cycle starting next month. Is that right?

Mr. Schultz said that is acquisition.

Ms. Sexton said we took those parcels initially that did not border on public land, they were isolated parcels and there wouldn't be a lot of controversy regarding the sale of them. So of those 118,000 acres we chose those parcels to move forward that had the least amount of controversy associated with them. Those that remain may have other issues associated with them but that doesn't mean we won't nominate them at some point but they may be more controversial.

Mr. Morrison said my concern aside from wanting to move this forward and get these lands around and building access is that because of the appraisal issue if we are unable to get a critical mass of deals going the legislature might not renew it after the sunset. I am hoping we can work through that appraisal issue so we're finding a fair return for the trust but also moving things forward.

Mr. Schultz said we agree with that point. One of the things we have talked about internally, you mentioned finding a middle ground, maybe what constitutes fair market value, and Ms. Holmgren indicated to me that through negotiated rulemaking the beneficiaries pushed hard they wanted the full value or the full access appraisal done. If it was the desire of the Board we could work to identify a mid-point value that is somewhere between no access and full access. We could use that as the default recommendation if that is something the Board wanted the department to do, or we could proceed as we're doing and bring both and recommend the high end. What I want to point out is either way we go



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with this whatever we do with land banking has the potential on land exchanges and land exchanges on land banking because in both instances we are divesting of assets. Either way we're going, there needs to be some consistency with what we are bringing forward to folks.

Mr. McGrath said another further clarification on the rule, say a parcel is nominated, the Board gives preliminary approval to the high value, nobody bids on it, is there then a process to follow or is that the end of it under our rule?

Mr. Schultz said as the director indicated, at the county level we would follow the county example where if we had a parcel and we put it out at a certain price and no one bid on it, we would reevaluate it. Did we miss the market value? We would look at reducing it and bring it back to the Board. We've actually done that on a parcel, the Miles City parcel a 20-acre tract and it was one we sold for Dept. of Corrections. It had an appraised value that was too high and it didn't sell. We reduced the value and came back and it sold. I would anticipate doing something like that. One caution, if we constantly say that a lot, you have people who are going to play the game. These are isolated tracts to begin with and if we say that we're going to do that as a matter of default, nobody shows up the first time, we incur additional process and they are looking at it for a reduced price. I think we need to be cautious. That potential exists. Or it could be something we just throw back in the pot and say we didn't sell it this go around, there is another 80,000 acres out there and maybe we will pick something else off under the next go around to sell instead of rebidding that one. That potential exists but we need to be cautious about what that could mean in terms of people hedging their bets against what they are going to pay.

Mr. McGrath said but the rule doesn't preclude that.

Mr. Schultz said it doesn't preclude it.

Mr. Morrison said I am uncomfortable with the process of putting it out there at a price that there is no bidding on and then sort of bidding against ourselves trying to find somebody. I'd like to have us try to settle this access issue in terms of the appraisal such that we can make it available at a price that is fair but is attractive the first go around.

Ms. Sexton said that is something we have internally had discussions about but our clear direction has been from the negotiated rulemaking and also from the land exchange policy that we are to look at the highest and best value, and as Mr. Schultz pointed out, not only from the sportsmen view but from the beneficiaries as well that we get the highest and best price. Given the fact that land values are appreciating all the time for us to take something less than that high value, at least to start out with that, would diminish the long term revenue we might be gaining from these land sales. I think the idea is obviously to sell them when they are ripest, and the Governor has said that a number of times, if there are folks unwilling to pay what we believe is a fair price, maybe we wait for a while and in five or 10 years that value will have increased to the point that we will get a better advantage. That is something if the Board wants to change the policy we have been operating under, that would certainly be up to the Board, but at this point in time we are operating under the direction of what the Board has given us.

Mr. Morrison said it is a fine line because obviously you want it to be high enough that you generate the revenue to be able to purchase lands to complete that side of the program but you don't want it so high you don't generate any revenue and render yourself unable to purchase anything. We're trying to find that price in sort of a vacuum because we don't have competitive bidding to help us out with it. I understand what the Governor is saying waiting for the time when the land is ripest but as I suggested before, these

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guys who are buying these doughnut holes are not speculators, they are guys who are trying to make it pencil out in their production operation.

Ms. Sexton said at this point we've only had two that were withdrawn. We are starting out from this and if we review it after we've gone through the full process, one go around with the land banking, we may reassess. But we have had a number of folks continuing through the process even though they do know what the appraised value is, they recognize this is an opportunity they may not have again. There have been other opportunities for state land to be purchased and then it is closed off so I think they realize this may be a one time deal and they are willing to take it at this opportunity.

Mr. McGrath said I would indicate from my point of view I think the highest and best use is critical that we maintain our policy. I'd be very reluctant as a Board member to change that. I do think if there are unique situations such as described by the Auditor, a person can come back. It doesn't preclude it for all time if there are unique situations the staff can evaluate that. If there is a problem with the appraisal bring it back, make a recommendation we take a lower number. So I don't think that is precluded. But I don't think we should change our policy, we should stick to the presumption of access and the highest and best use. That was a hard fought issue in terms of the rules and given this is our first foray into this issue that is important we keep and maintain that policy.

Ms. McCulloch said I am inclined to agree with the Attorney General. Partly because I am the State Superintendent and getting the most we can for lands is in the best interest of the beneficiaries, the kids, but also I am concerned that if we sell the land at a lower price and that land can be turned around five minutes later and be sold for a lot more, it smacks of sweetheart deals. I would caution us about getting into that area.

Mr. Morrison said it is my understanding we do not have an administrative rule that requires that we assume access. We take into consideration access.

Ms. Sexton said we appraise the property both ways, with and without access, and the department makes a recommendation. Our recommendation has consistently been at the higher amount and that is what has been approved by the Board.

Mr. Morrison said is there anything in the rule that dictates whether we assume there is access to a presently isolated parcel?

Ms. Sexton said no there is not. If we were to prove that it would have to go through the legal channels, the courts, to determine whether we have assumed access or not as a legal matter.

Mr. Morrison said let me make clear what I am saying, our first obligation is to produce revenue for the trust. I do not think we should be selling off isolated parcels for less than what we can get for them. The question is what can we get for them. What I understand is we are running into some obstacles because we are currently generating revenue based on a Value x AUM that assumes a lack of access, we are offering it for sale at a price that assumes access and that the surrounding landowners are unwilling or unable to pay that price. What I am talking about is not getting less than top dollar what I am talking about is getting the deal done at top dollar as opposed to overpricing it.

Lt. Governor Bohlinger said these sort of discussions are important. The Land Board has an opportunity to discuss with the department their thoughts on assessing value and moving the state's interest forward. I think that is very healthy.

Wallace Bell, Great Falls, said this isn't the primary issue I came down here for, but as a citizen and looking at the state lands, and I look at them as being public lands, this discussion we're having here the gentlemen said we are getting \$1.60 per acre for this doughnut hole, and I think you're overlooking what the impact would be if that land was just removed from the lessee. In other words, just take it off and let it sit empty because then that land is worth more to the person that is leasing it than \$1.60 per acre. That is something worth looking at, you're not helpless here.

206-5                    LAND BANKING REAUTHORIZATION AND PROPOSED CASH LEASING  
LEGISLATION

Ms. Sexton said these are two issues I wanted to bring before the Board and gauge its support for these two pieces of legislation. The first is land banking reauthorization, we've discussed that. The sunset is during the 2008 – 2009 biennium and in order for the Board and the public to evaluate the merits of this program I would recommend we look at reauthorization in 2007 so we are fully prepared and can move forward. We do have some changes we would like to implement and we will share those with the Board as we go along, but we would like to seek the Board's support for the reauthorization of land banking.

The second issue is agricultural cash leasing which has been before the Board a number of times, mostly during the summer. We've had several discussions about this. At the Board's direction we are putting together a package for legislative consideration regarding agricultural leasing and we will keep the Board apprised of the procedure and the formula we establish and we would also seek its support for that legislation. As I understand in the past, the Board has been the supporter or has promoted these bills through the legislative process. So these are two we are considering.

Mr. McGrath said I think my recollection of what we've done in the past is generally support. The department puts up a proposal, we don't take a formal vote on those proposals ahead of time, and then hopefully depending upon how things evolve during the session the Board members come in either supporting or opposing specific provisions. The last time we did reauthorization all of the Board members supported it, or most of us supported it. But I don't think we take a formal position on it. Board members are free to do what they choose to do as the session process proceeds.

Mr. Schultz said what we have done in the past with land banking specifically, when a piece of legislation comes it is "by the request of..." and normally bills come out by the request of the department unless the Board wanted to have its name on there. Actually land banking was not by the request of the department, it was by the request of the Land Board. We are going through the EPP process right now unless we get some indication not to proceed down this road. At some point the department would need to know if the Board would want to have "by the request of..." on either one of these pieces of legislation so we could make sure that is reflected in the record.

Mr. Morrison said I support reauthorizing the land banking process but I think that we're all going to have an easier time getting that done if we are successful in some of these transactions.

206-8                    UPDATE ON DEPT CORRECTIONS PINE HILLS SCHOOL PROPERTY SALE

Ms. Sexton said there is a separate sheet I handed out which is a recent update to this. At the January 2006 meeting we brought forward an expedited process for the potential sale of a piece of property

belonging to the Department of Corrections near Miles City. The Sanjel Corporation was interested in this process and we were trying to get it through by March 1<sup>st</sup> because they were very eager. Well, at this point in time their process has slowed down somewhat so ours has as well. Again, the Board gave preliminary approval to the sale of this Department of Corrections land near Miles City and the process that remains is the proposal will conduct soil and groundwater assessment by April. MEPA analysis will be completed by the end of March so we are going through that process now. The survey is completed. The Board will be requested to set a minimum bid at the April meeting and we will publish the auction notice and the auction will be held in mid-May. That process has been elongated and I just wanted the Board to know the latest. We are not sure whether the Sanjel Corporation is still interested in this property or not, they are looking at other options.

#### PUBLIC COMMENT

Wallace Bell, Great Falls, said this is a follow up on last month's discussion on the Beaver Lake leases. My wife and I currently lease lot 6 on Beaver Lake in Flathead County. I testified before this Board on February 22, 2005. Based upon the follow-up comment I started researching possibilities for long term solutions for the recreational leases held by the trust. I started looking at the federal legislation authored by Senator Baucus which enabled the sale of 265 sites on Canyon Ferry Reservoir. I believe Mr. Hal Harper is familiar with this effort. The Senate Bill S. 1913 resulted in Pub. L. No. 105-277, Title X, which enabled lease holders to purchase their leases at fair market value. Lease holders unable to purchase were given the option to continue leasing for two five-year periods. The arrangement allowed the current lease holders to purchase without the threat of a bidding war. Under that bill, the proceeds from that sale were to be used to establish an endowment fund for the conservation of fish and wildlife and enhancement of public hunting and fishing opportunities for the State of Montana. I am referring to a March 2, 2006, *Great Falls Tribune* article here. From that sale there is \$700,000 available to be applied for to be used for these projects. In looking at Montana Code Annotated §77-2-362 land banking laws, I can see the possibility of legislatively melding these ideas, and others, into a workable long term solution. The sale of these parcels would provide resources to acquire additional public trust lands and access, which we have been discussing, which would be agreeable with the citizenry while not impacting the status quo.

I think these lease lands probably take up a very small portion of things. I am not sure what overall action can be expected from the current lease holders. I am sure they want to see these holdings protected in their present state. I would expect a comfortable solution for some would be a reasonable appraisal and affordable lease rate. I am also sure if something is not done to allow these isolated parcels to survive they will become something none of us wishes to see. Consideration should also be given that most current lease holders are resident citizens that support their schools and communities on a year-round basis. Since any solution is going to take time and effort I would like to suggest the Board roll the appraisal values back to the 2000 appraisal and lease the sites at 5%. Form a coalition of lease holders, personnel from DNRC, Legislative Services Division, legislators, and others to develop a workable long term agreement to be completed and ready for submittal to the 2007 session.

Motion was made to adjourn by Ms. McCulloch. Seconded by Mr. Morrison.